

ATTORNEY PROFESSIONALISM FORUM

To the Forum:

I graduated law school last year and was just admitted to the bar. With very few job prospects out there for young attorneys, I decided to hang out my own shingle. Lately I have encountered judges and counsel who give me strange looks when they see me in court or at a meeting. I have also lost a few clients and have come to realize, I am not sure why, that this may have something to do with my appearance. I never really understood the need for attorneys to dress formally. So I dress pretty much the way I did in law school. I don't wear a tie when I am in court. I usually enjoy sporting a nice pair of expensive jeans and then top them off with some brightly colored shoes. Some of the judges that I have appeared before have openly commented not only on my informal dress but also my piercings and a few visible tattoos. To me, the way I dress is an expression of my basic rights to free speech. It is the quality of my arguments that should count, not the way I dress that should be important. I am the first member of my family to become a lawyer and do not have any mentors to help me. Do I have a professional obligation to wear a suit and tie when I am in court? What about meetings with clients or other lawyers?

Sincerely,

N.O. Fashionplate

Dear N.O. Fashionplate:

We all remember the famous scene in *My Cousin Vinny* where Vincent LaGuardia Gambini, Esq., makes his first appearance before the Honorable Chamberlain Haller wearing a leather jacket. When asked by the judge what he is wearing, Vinny says "I don't get the question," and answers "Um, I'm wearing clothes." In the iconic colloquy that follows, Judge Haller sternly sets us all straight about proper dress in the courtroom:

Judge Haller: When you come into my court looking like you do, you not only insult me, but you insult the integrity of this court!

Vinny: I apologize, sir, but, uh . . . this is how I dress.

Judge Haller: The next time you appear in my court, you will look lawyerly. And I mean you comb your hair, and wear a suit and tie. And that suit had better be made out of some sort of . . . cloth. You understand me?

Vinny: Uh yes. Fine, Judge, fine.

Hopefully, we all "get" what Judge Haller was saying to Mr. Gambini: appropriate dress is part of professional responsibility, especially when we go to court.

In the past two decades, the business community has experienced many changes in how people dress at the office and in other professional settings. Some attribute this to the technology sector (*see* Claire Cain Miller, *Techies Break a Fashion Taboo*, N.Y. Times, Aug. 3, 2012), which is almost completely dominated by younger entrepreneurs who believe that, like the typewriter, the "suit and tie" for men and business suits for women are relics of a foregone era. While many law offices have adopted business casual as the norm, the legal profession has held the line when it comes to traditional business attire in a professional setting, even though, more often than not, clients are more likely to dress in business-casual attire when meeting with their counsel.

We know that this may seem old-fashioned, but we should not overlook the fact that court proceedings are serious business. They are forums that address our basic freedoms and countless economic issues. How we dress in the courtroom is a sign of respect that should be consistent with the seriousness of what we do when we appear in court. Believe it or not, attorneys have shown up in court wearing jogging suits and sneakers; we can only wonder what they were thinking.

We attorneys should not dress in a manner that unnecessarily calls attention to ourselves or adopts a casual attitude about the importance of what we do and the judicial process. Former Chief Judge Judith S. Kaye put

it best when she said that "[one's] dress should not be noticed [and we] should stand out for the quality of our presentation." *See* Ann Farmer, *Order in the Closet – Why Attire for Women Lawyers Is Still an Issue*, American Bar Association, Perspectives, Vol. 19, No. 2 (Fall 2010). Although Chief Judge Kaye's comments were focused on female attorneys, proper dress in the courtroom is *not* a gender issue, and *all* attorneys should follow her sage advice.

Perhaps anticipating what Judge Haller would say a few years later in *My Cousin Vinny*, a Florida court took on the issue in *Sandstrom v. State*, 309 So. 2d 17 (Fla. Dist. Ct. App. 1975), *cert. dismissed*, 336 So. 2d 572 (Fla. 1976), when a lawyer showed up in court wearing what appeared to be a white leisure suit (probably similar to what John Travolta wore in *Saturday Night Fever*), no tie and exposed chest hair. The court opined in *Sandstrom* that proper attire in the courtroom is an integral part of our judicial system. In the words of the court:

The Attorney Professionalism Committee invites our readers to send in comments or alternate views to the responses printed below, as well as additional hypothetical fact patterns or scenarios to be considered for future columns. **Send your comments or questions to: NYSBA, One Elk Street, Albany, NY 12207, Attn: Attorney Professionalism Forum, or by e-mail to journal@nysba.org.**

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The wearing of a coat and necktie in open court has been a long honored tradition. It has always been considered a contribution to the seriousness and solemnity of the occasion and the proceedings. It is a sign of respect. A “jacket and tie” are still required dress in many public places. The Supreme Court of the United States by “Notice to Counsel” advises that appropriate dress in appearing before that court is conservative business dress. Would anyone question that includes a coat and necktie?

In our judgment the court’s order requiring appellant to wear a tie in court was a simple requirement bearing a reasonable relationship to the proper administration of justice in that court. Appellant’s dogged refusal to comply demonstrated a total lack of cooperation by counsel and was hardly befitting a member of the bar.

Id.

But how does one know what is appropriate, and what is not? While that may be a relatively easy task when we are talking about men wearing a suit and tie to court, we should also understand that appropriate standards are not always written in stone and, in fact, often change with the times. And, what is acceptable to some may not be acceptable to everyone. *Peck v. Stone*, 32 A.D.2d 506 (4th Dep’t 1969), is a great example. In *Peck*, the trial court order prohibiting a female attorney from wearing a miniskirt in court resulted in a reversal by the Appellate Division. The court in *Peck* found that:

[T]he record fail[ed] to show that petitioner’s appearance in any way created distraction or in any manner disrupted the ordinary proceedings of the court. There is no suggestion that petitioner’s dress was so immodest or revealing as to shock one’s sense of propriety. Neither is it urged by respondent that the continued appearance by petitioner, so garbed, would create any distraction. In fact, with understandable candor, respondent’s counsel admitted that no

such claim was made, and, further that her appearance did not create a disruptive condition. Furthermore the record demonstrates that during appellant’s colloquy with the court she was at all times respectful, reserved and at no time could her demonstrated attitude in any manner be considered contrary to her ethical responsibilities as an officer of the court.

Id.

In re De Carlo, 141 N.J. Super. 42 (1976), is another example. Citing *Peck* and distinguishing *Sandstrom*, the appellate court reversed the lower court’s contempt order that chastised a female attorney who wore gray wool slacks, a matching gray sweater and a green open-collared blouse in court, finding such attire “w[as] not of the kind that could be fairly labeled disruptive, distracting or depreciative of the solemnity of the judicial process so as to foreclose her courtroom appearance.” *Id.* The following decade, a California appellate court held that the standard for appropriate courtroom attire was based on the test as to “whether it interfere[d] with courtroom decorum disrupting justice, that is, whether it tend[ed] to cause disorder or interference with or impede the functioning of the court.” See *Jensen v. Superior Court*, 154 Cal. App. 3d 533 (1984) (reversal of lower court’s refusal to permit plaintiff’s attorney, who wore a turban, to appear at a hearing, unless the attorney showed he wore the turban for some “legitimate” purpose).

An opinion of the New York County Lawyers’ Association Committee on Professional Ethics (the NYCLA Opinion) is also instructive and expresses the view that the Code of Professional Responsibility (the precursor to the current Rules of Professional Conduct (the RPC)) did not prohibit female attorneys “from wearing appropriately tailored pants suits or other pant-based outfits in a court appearance.” See NYCLA Eth. Op. 688, 1991 WL 755944 (1991). In support of this view, the NYCLA Opinion cited to former Disciplinary Rules 1-102(A)(3) and (5) as

well as 7-106(C)(6), respectively. Both of these rules are now codified (though slightly revised) as Rules 8.4(b)–(d) and 3.3(f)(2) of the RPC. Rule 8.4(d) of the RPC provides that “a lawyer . . . shall not engage in conduct that is prejudicial to the administration of justice.” Furthermore, Rule 3.3(f)(2) of the RPC states that “[i]n appearing as a lawyer before a tribunal, a lawyer shall not engage in undignified or discourteous conduct.”

More recently, at a Seventh Circuit Bar Association Meeting in 2009, a judge declared that for women “titillating attire was a huge problem, [and] a distraction in the courtroom” and that “[one should not] dress in court as if it’s Saturday night and you’re going out to a party.” The same judge also frowned upon men “who sported loud ties, some with designs like smiley faces.” See John Schwartz, *At a Symposium of Judges, a Debate on the Laws of Fashion*, N.Y. Times, May 22, 2009.

With all due respect to what you say is your need to express your rights of free speech, when it comes to proper dress there are some things best left at the door when you enter a courthouse. As officers of the court and members of the bar, we all have both a professional and an ethical obligation to dress in a professional manner when appearing in court. That means a suit and tie for men and an appropriate business suit for women. With regard to your tattoos and piercings, we would suggest that you do your best to remove any distracting jewelry before you appear before any judge, because such accessories cause unnecessary distraction and potentially interfere with courtroom decorum. See, e.g., *Peck*, 32 A.D.2d at 507–08; see also *Jensen*, 154 Cal. App. 3d at 537. It is hard to help you with your tattoos which may not be so easy to hide. We suggest that the next time you appear in court, you would be wise to make every effort to hide the more potentially distracting tattoos so that a judge may focus more closely on what you are saying rather than what you look like. For better or worse, human beings have a natural inclination to focus on

what people look like, so based on how you describe yourself, we believe that you should limit how many visible tattoos people can see when you are in court.

As for your question concerning proper dress when meeting with clients or other lawyers, hopefully your own common sense should guide how you present yourself in those particular settings. As your client's counsel, you are in the best position to gauge your client's expectations. If, for example, you happen to represent a client who also shares your interest in piercings and tattoos, then it may be acceptable in limited circumstances to dress informally in the manner as you have described. However, when meeting with other lawyers (and potentially adverse parties) we strongly advise that you dress as if you were going to court. Many times an adversary and his or her client will scrutinize how the opposing party and lawyer present themselves, and you do not want to dress in a way that could potentially compromise the manner in which you would advocate for your client.

Remember, people rarely get criticized for overdressing, a view that was recently embraced by one notable pop culture figure. See Justin Timberlake,

"Suit & Tie," on *The 20/20 Experience* (RCA Records 2013). However, those who dress down often face the risk of having their choice of clothing overshadow what they might be saying. To that end, use your best judgment deciding what to wear when you meet with a client. But when you go to court you have an obligation to present yourself in a respectful manner (which means appropriate business attire).

That said, we should all remember that the standards for appropriate dress are never stagnant and are likely to change with the times. It would be interesting to put this Forum in a time capsule and open it in 20 years. Will judges still wear robes, and will lawyers still wear business suits in court? We think so, but only time will tell.

Sincerely,
The Forum by
Vincent J. Syracuse, Esq.
(syracuse@thsh.com) and
Matthew R. Maron, Esq.
(maron@thsh.com),
Tannenbaum Helpert Syracuse &
Hirschtritt LLP

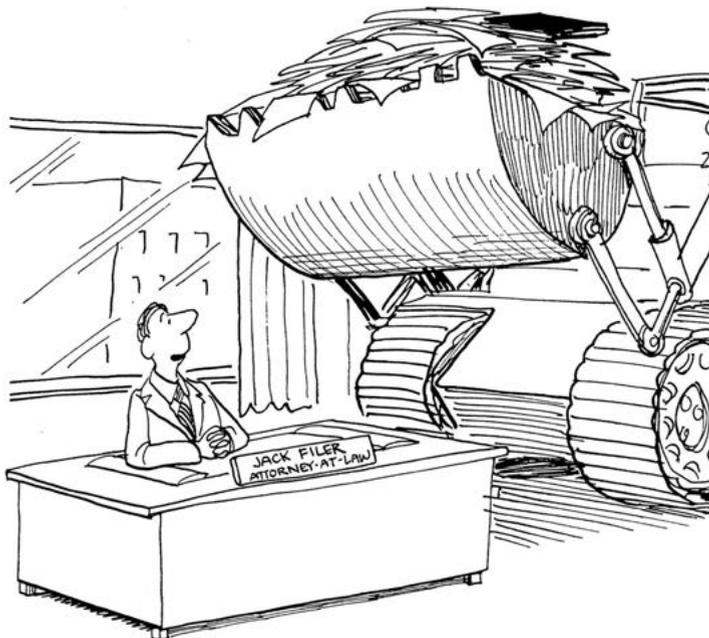
QUESTION FOR THE NEXT ATTORNEY PROFESSIONALISM FORUM

The news in recent months is full of stories on data security and the risks that must be addressed for businesses to protect their electronic information. As attorneys, I know we all have certain obligations to preserve the confidential information of our clients. I am well aware that much of the electronic information on our firm's networks is made up of confidential information arising from client matters. I am the lucky partner tasked by my colleagues to help implement firmwide data security policies. What ethical obligations come into play on this issue? Do the attorneys at my firm have an obligation to both advise and coordinate data security policies with our non-attorney staff?

Sincerely,
Richard Risk-Adverse

THE BURDEN OF PROOF CONTINUED FROM PAGE 22

- (c) Application. This section also applies to a proceeding brought under the workers' compensation law.
6. Addressing a predecessor to CPLR 205(a), Code Civ. Pr. § 405.
 7. 215 N.Y. 533 (1915).
 8. *Id.* at 539.
 9. *Id.* The statute to be construed (Code Civ. Pr. § 405) has its roots in the distant past. By the English Limitation Act of 1623 (21 Jac. 1, c. 16, s. 4) . . . The section was copied into our own laws by a statute enacted in 1788 (L. 1788, ch. 43) and again in 1801 (1 R. L. 186, sec. 5). It then passed into the Revised Statutes (2 R. S. [1st ed.] 298, § 33).
 10. *Norex Petroleum Ltd. v. Blavatnik*, 2012 N.Y. Slip Op. 33181(U), 10–11 (Sup. Ct., N.Y. Co. June 13, 2012) (citation omitted).
 11. *Norex Petroleum Ltd.*, 105 A.D.3d 659–60 (citations omitted).
 12. They included, *inter alia*, the application of a federal analog to CPLR 205(a), 28 U.S.C. § 1367(d), whether the dismissal of the federal action was on the merits, and whether certain claims in the second action related back to the original filing.
 13. 93 N.Y.2d 525 (1999).
 14. *Id.* at 526.
 15. *Id.* at 527.
 16. *Id.* (citation omitted).
 17. *Id.* at 529 (citation omitted).
 18. 91 N.Y.2d 180 (1997).
 19. 215 N.Y. 533 (1915).
 20. *Id.* at 540–41 (citation omitted).



"I'm in a paper work mood, let 'er rip."